



CONGRESSIONAL BUDGET OFFICE INTERGOVERNMENTAL MANDATES STATEMENT

July 15, 1999

S. 692

Internet Gambling Prohibition Act of 1999

As reported by the Senate Committee on the Judiciary on June 17, 1999

SUMMARY

S. 692 would prohibit gambling conducted over the Internet or an interactive computer service. The bill would grant immunity to providers of interactive computer services if third parties use their facilities in ways that violate federal and state laws regulating gambling. The bill also would provide several exemptions to the gambling prohibition, including, under certain circumstances, gaming conducted by states, parimutuel betting, and betting on legal horse and dog racing. The bill would not provide similar exemptions for gaming conducted by tribal governments.

The bill contains several intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA). CBO estimates that the total costs of complying with these mandates, which would be borne primarily by tribal governments, would exceed the threshold established in UMRA (\$50 million in 1996, adjusted annually for inflation).

INTERGOVERNMENTAL MANDATES CONTAINED IN BILL

The prohibition on gambling conducted over the Internet or an interactive computer service would impose mandates on state, local, or tribal governments in several ways. First, S. 692 defines an interactive computer service as any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server. This definition is sufficiently broad that it probably would encompass the systems used by tribal governments to offer linked bingo and progressive slot machines. Linked bingo occurs when several tribes, either within a state or across many states, use an interactive computer service to simultaneously play one bingo game, thereby increasing the potential payoff available to all participants. Assuming the bill would prohibit tribes from operating these games, the prohibition would constitute an intergovernmental mandate as defined by UMRA.

The prohibition on gambling conducted over the Internet would also constitute a mandate because state, local, and tribal governments would not be allowed to provide access to gaming or lottery sites using this technology. The bill also would preempt certain state liability laws as they apply to providers of interactive computer services.

Finally, progressive slot machines, like linked bingo, allow several tribes to link their slot machines using technology that apparently also would be prohibited by this bill. Slot machines are linked for the purpose of increasing the available winnings to all participants. Because the legality of this activity under current law is unclear, we cannot determine if the prohibitions in S. 692 would constitute a new intergovernmental mandate as defined by UMRA.

ESTIMATED DIRECT COSTS OF MANDATES TO STATE, LOCAL, AND TRIBAL GOVERNMENTS

Is the Statutory Threshold Exceeded (\$50 million in 1996, Adjusted Annually for Inflation)?

Yes.

Total Direct Costs of Mandates

Linked Bingo. Tribal gambling is regulated in different ways, depending on the type of activity. Bingo is considered a Class II form of gaming, which is currently regulated by the tribes themselves, under guidelines set forth in the Indian Gaming Regulatory Act (IGRA). IGRA explicitly allows tribes to use available forms of technology, such as those used in linked bingo, to increase the economic benefits of Class II gaming. Assuming the bill would have the effect of barring the use of such linked bingo machines, CBO estimates that the net costs to tribal governments would total more than \$60 million a year. CBO considers the cost of this mandate to be the net revenues that tribal governments would lose if this activity were interpreted to be illegal under the bill. Net revenues are the funds remaining from total bets after associated operating expenses are paid and payments are made to winners.

Currently, computers owned by at least 60 tribes are linked together to play bingo. CBO cannot determine the exact amount of net revenue generated from the bingo games because much of the information is proprietary. Based on information provided by the companies that provide these machines and some of the tribes that use them, however, we estimate that the cost to tribal governments would exceed the threshold established in UMRA (\$50 million in

1996, adjusted annually for inflation). Assuming a conservative growth rate, the revenue loss could increase to as much as \$90 million by 2004.

It might be possible for tribes to implement alternative forms of gaming that would not use the electronic systems covered by the bill. However, CBO cannot predict the likelihood that tribes would implement such systems, how quickly they could do so, or how much revenue they could generate. In the absence of electronic linkages, participation might increase in other games unaffected by S. 692. But different types of games tend to have different kinds of participants, so this might not be a substantial shift. In the absence of linked bingo, participation also might shift away from tribal bingo to other games operated by nonprofit groups.

Internet Gambling. Of all governmental entities, Indian tribes have shown the greatest interest in using the Internet as a forum for generating gaming revenues and thus are most likely to be affected by the bill's ban on Internet gambling. The use by tribal governments of gambling sites on the Internet that are accessible to the public from their home computers has been subject to court challenges. Because these challenges are still pending, no tribes are currently offering gambling on the Internet. Thus, the legality of such activities and the potential for Indian tribes to generate revenues from them, in the absence of this legislation, are uncertain.

State and Local Lotteries. State and local governments would also be prohibited from using the Internet or other technology covered by the bill to provide access to the lottery in any place that is not public. While no governments currently plan to use the Internet for these purposes, as technology expands and becomes more widely used in the home (a nonpublic place), it is possible that, in the absence of this bill, some would offer such options. CBO cannot estimate the future loss of income from this prohibition because it is not clear if or when such access to lotteries would be provided by state and local governments.

Immunity From State Liability Laws. The bill would preempt state liability laws by granting immunity to providers of interactive computer services if third parties use their facilities in ways that violate federal and state laws regulating gambling. This preemption would be a mandate as defined by UMRA, but CBO estimates that it would impose no costs on state, local, or tribal governments.

Progressive Slot Machines. Slot machines are considered Class III gaming, and are generally regulated by agreements between a state and tribe. Unlike Class II gaming, however, this category does not clearly fit within the existing federal exceptions in IGRA that allow for the use of certain technology. CBO is therefore unsure whether current federal laws that prohibit the use of wire communication to assist in gambling apply to progressive slot machines. We thus cannot determine whether the prohibition in S. 692 would constitute a new mandate as defined by UMRA or a reaffirmation of current law.

Progressive slot machines are found at 90 Indian casinos in 12 states. Based on information from vendors that provide such machines and some of the tribes that use them, CBO estimates that prohibiting their use would cause net revenue losses totaling more than \$80 million per year. This estimate conservatively assumes that net revenues from the more than 2,200 affected slot machines average at least \$100 a day.

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